
(2011) 08 AP CK 0071

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6109 of 2010

M. Manjula and Others

APPELLANT

Vs

Gajam Chandriah (died) and Others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 53A

Citation : (2011) 6 ALD 109 : (2012) 115 RD 255

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : M. Rajamalla Reddy, for the Appellant; D. Pramada, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kumar, J.—The Defendants in O.S. No. 65 of 2007 on the file of the learned Senior Civil Judge at Siddipet filed this Civil Revision Petition aggrieved by the order dated 15.12.2010 passed by the said Court holding the documents sought to be marked by them in evidence inadmissible.

2. Parties shall be referred to as arrayed before the Court below.

3. The suit, O.S. No. 65 of 2007, was filed by the Plaintiffs seeking declaration of title and perpetual injunction in respect of the suit schedule property. The Defendants wanted to mark in evidence the unregistered sale deeds dated 25.02.1996 and 28.08.1996, said to have been executed by Gajam Chandraiah, the deceased first Plaintiff. The Court below disallowed the same by the order under revision, holding that the said documents compulsorily required registration u/s 17 of the Registration Act, 1908 (for brevity, "Act of 1908") and as they were not so registered, they were inadmissible in evidence.

4. Surprisingly the Court below, having referred to Section 49 of the Act of 1908, failed to understand the import of the proviso appended thereto. Section 49

reads as under:

49. Effect of non-registration of documents required to be registered:

No document required by Section 17 or by any provisions of the Transfer of Property Act, 1882 to be registered shall,-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt; or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 [x x x] or as evidence of any collateral transaction not required to be effected by registered instrument.

5. Relevant to note, the words "or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882" which earlier found mention in the bracketed portion "[x x x]" in the proviso were omitted by the Registration and other related Laws (Amendment) Act, 2001 (Act 48 of 2001) with effect from 24.09.2001. A similar amendment was effected thereunder to Section 53-A of the Transfer of Property Act, 1882 (for brevity, "the Act of 1882"):

"53-A. Part performance:

Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession, of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that [x x x] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance

thereof.

6. The words in the bracketed portion "[x x x]" which were omitted under Act 48 of 2001 read as under:

"the contract, though required to be registered, has not been registered, or,".

Thus, as matters stand, under the proviso to Section 49 of the Act of 1908, an unregistered document affecting immovable property requiring registration can still be received as evidence of the contract in a specific performance suit and as evidence of any collateral transaction not required to be effected by a registered instrument.

7. As regards receiving such a document in evidence of part performance u/s 53-A of the Act of 1882, the statutory amendments of 2001 make the position clear in so far as documents executed thereafter are concerned. The question however arises as to whether the same would be the situation vis-a-vis documents executed prior to the 2001 amendments. The answer to this conundrum lies in Section 17(1A) of the Act of 1908, inserted in the statute by Act 48 of 2001, which reads as under:

"17. Documents of which registration is compulsory:

(1) ...

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A.

(2) ...

8. The provision speaks only of compulsory registration of documents of conveyance for consideration executed after the commencement of Act 48 of 2001 for the purpose of Section 53-A of the Act of 1882. By necessary implication, such documents, if executed prior to such commencement even if unregistered, would still be covered by Section 53-A of the Act of 1882 as it stood prior to the amendment effected under Act of 48 of 2001. Therefore, the subject documents, being unregistered sale deeds of the year 1996, would fall within the ambit of the protection afforded by the aforesaid Section and they would continue to be governed by the unamended Section 53-A of the Act of 1882. It would thus be open to the Defendants in the suit to claim part performance of the unregistered sale deeds u/s 53-A of the Act of 1882 as a defence.

9. In consequence, the Defendants would be entitled to mark in evidence these two unregistered sale deeds of the year 1996 for the purpose of proving any

collateral transaction not required to be effected by a registered document and as evidence of part performance of the contract u/s 53-A of the Act of 1882.

10. The order of the Court below, holding to the contrary, is erroneous in law being against the statutory provisions and is accordingly set aside.

11. The Civil Revision Petition is allowed to the extent indicated above. The Court below shall permit the Defendants to mark the two unregistered sale deeds dated 25.02.1996 and 28.08.1996 for the purposes aforesated.

12. There shall be no order as to costs.